IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 675/2006
(Amit Dave & Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 20.11.2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. C.S.Kotwani, for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Parikshit Nayak, for the non-petitioner No.2

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 8.12.2005 passed by the Judicial Magistrate, Gadi, District Banswara (for short 'the trial court' hereinafter) whereby the trial court took the cognizance of the offences under sections 498-A, 323, 406 IPC.

I have heard learned counsel for the petitioners and public prosecutor for the State assisted by the learned counsel for the complainant non-petitioner No.2.

It is contended by learned counsel for the petitioners that

no part of cause of action arose in the territorial jurisdiction of the court of Judicial Magistrate, Gadi, District Banswara and therefore, the order taking cognizance is bad as the court at Gadi has no jurisdictional to try the case. Learned counsel for the petitioners submits that in the marriage of the non-petitioner No.2 with the petitioner No.1 Amit Dave was solemnized on 22.2.2002 at Village Khodan, Distt. Banswara and thereafter, the complainant-non-petitioner No.2 and petitioners have been residing in Balasiner (Gujarat) and therefore, if any cause of action arose to the complainant then it was at Balasiner (Gujarat) and not at Village Khodan, District Bansara. Learned counsel for the petitioners further contended that in para No.2 of the complaint, the complainant categorically stated that on 1.1.2003 she was turned out from the matrimonial home and, therefore, she came with her brother to Village Khodan, Distt. Banswara. Therefore, the order taking cognizance of the offence under Section 323 IPC dated 8.12.2005 is specifically barred by period of limitation as envisaged under Section 468 Cr.P.C. for the reason that the complaint was filed on 7.10.2005 i.e. much after expiry of period of limitation of one year from the date of occurrence which alleged to prior to 1.1.2003 so far Sec. 323 IPC is concerned.

Learned Public Prosecutor and learned counsel for the

complainant have supported the order impugned.

Learned counsel for the petitioners have relied upon the decision of the Hon'ble Supreme Court in Y.Abraham Ajith & Ors. Vs. Inspector of Police, Chennai & Anr., 2004 AIR SCW 4788 and two decisions of this Court in Surendra Singh & Ors. Vs. State of Rajasthan & Anr., 2006(1) Cr.L.R.(Raj.) 670 and Dinesh Kumar Sharma & Ors. Vs. State of Rajasthan & Ors., 2006(2) WLC (Raj.) 398.

I have carefully gone through the complaint filed by the non-petitioner No.2 Smt. Swati Dave before the trial court. It has not been disputed by either of the parties that the marriage between petitioner No.1 and complainant – non-petitioner No.2 was solemanized at Village Khodan, District Banswara which falls within the territorial jurisdiction of the trial court. In the complaint it has been stated by the non-petitioner No.2 that at the time of marriage, her parents gave dowry articles, which were entrusted to the petitioners at Khodan, Distt. Banswara. Dowery articles is "Stridhan" of the complainant-non-petitioner No.2. The allegation regarding subjecting the complaint to cruelty and harassment are no doubt at Balasiner (Gujarat) constituting the offence under Section 498-A punishable with the imprisonment for a term, which may extend to three years and

therefore, the period of limitation as envisaged under Sec. 468 Cr.P.C. does not apply for that offence.

So far offence under Sec. 406 IPC is concerned, the dowry articles were entrusted to the petitioner at Khodan, Distt. Banswara to which the trial court has territorial jurisdiction to try the case. Section 181 Cr.P.C. provides that any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person. Thus, in my view so far offence under Sec. 406 Cr.P.C. is concerned, the Court at Gadi, Distt. Banswara has territorial jurisdiction to trye the case where various dowry articles being "Stridhan" were received by the petitioners at Village Khodan, District Banswara and therefore, the Court at Gadi, District Banswara has a jurisdiction to try the case. Section 178(b) Cr.P.C. provides that where an offence is committed partly in one local area and partly in another, it may be inquired into or tried by a Court having jurisdiction one or any of such local areas. In view of provision of Section 178 Cr.P.C., the Court at Gadi has territorial jurisdiction to inquire into and try the case for the offences under Section 498-A and 406 IPC and, therefore, contention raised by

the learned counsel for the petitioners in this regard and as cannot be accepted. Such the decisions relied on by learned counsel for the petitioners are no help to the petitioners. In view of the provision of sub-section (4) of Section 181 Cr.P.C. These provisions were neither in issue nor have been considered in those three decisions.

So far offence under Sec. 323 IPC is concerned, apparently, it is barred by period of limitation. The offence under Sec. 323 IPC is punishable with the imprisonment which may extend to one year. Section 468(2) provides that the period of limitation shall be one year if the offence is punishable with the imprisonment for a term exceeding one year. In the instant case admittedly non-petitioner No.2 as stated in the complaint was turned out from matrimonial home on 1.1.2003 and the complaint was filed much after expiry of one year.

Consequently, the criminal misc. petition is partly allowed. The order taking cognizance for the offence under Sec. 323 IPC against the petitioners is set aside. However, the order taking cognizance for the offences under Sections 498-A and 406 IPC are maintained and it is held that the trial court has territorial jurisdiction to try the case. Stay petition stands dismissed.

Learned counsel for the petitioners submits that the petitioners will surrender before the trial court on 15.12.2006 and move a regular bail. If the petitioners surrender before the trial court on 15.12.2006 and move an application for the regular bail, the trial court shall consider the bail application and decide on the same day. Till 15.12.2006, non-bailable warrant issued against the petitioners shall not be executed. However, if the petitioners fail to surrender before the trial court on 15.12.2006, it will be open for the trial court to secure their presence by non-bailable warrant.

(H.R.PANWAR),J.

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